

AMENDED IN ASSEMBLY AUGUST 20, 2001

AMENDED IN ASSEMBLY MAY 7, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 881

Introduced by Assembly Member Simitian

*(Coauthors: Assembly Members Alquist, Cardoza, Chavez, Cohn,
Harman, Robert Pacheco, Papan, and Strickland)*

February 22, 2001

An act to amend, repeal, and add Section 2031 of the Code of Civil Procedure, and to amend Section 6254 of the Government Code, relating to discovery.

LEGISLATIVE COUNSEL'S DIGEST

AB 881, as amended, Simitian. Discovery.

Existing law provides that any party may obtain discovery, as specified, by inspecting documents, tangible things, and land or other property that are in the possession, custody, or control of any party to the action.

Existing law also provides that when an inspection of documents, tangible things, or places has been demanded, upon motion, the court may make an order to protect these items from discovery.

This bill would provide that a party may file a noticed motion for an order of the court permitting specific items or information subject to a protective order to be sent to a California state or federal governmental agency responsible for regulating or monitoring the subject matter contained in the items or information protected.

This bill would also provide procedures for lodging the protected items or information with the court or government agency and would make any contract or agreement that restricts a party from exercising the right to file a motion under these provisions null and void.

This bill would provide an order entered pursuant to this section is not admissible in any action or in any proceeding to establish the liability of any party.

This bill would repeal the above changes on January 1, 2007.

This bill would also make conforming changes by including these records as exempt from public inspection.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds that consistent with NBC
2 Subsidiary (KNBC-TV), Inc. v. Superior Court 20 Cal.4th 1178
3 (1999), the Judicial Council has adopted Rules 243.1–243.4 of the
4 California Rules of Court, which state, among other things:
5 “Unless confidentiality is required by law, court records are
6 presumed to be open.” Also consistent with NBC Subsidiary
7 (KNBC-TV), Inc. v. Superior Court, at pp. 1208-1209, n. 25, the
8 Judicial Council Rules do not apply to discovery materials,
9 including those filed with the court unless they are used at trial or
10 as a basis for adjudication of matters other than discovery motions
11 or proceedings. The Judicial Council Rules also do not apply to
12 records that are required to be kept confidential by law (CRC
13 243.1). The Legislature recognizes that discovery materials can
14 include trade secrets, confidential research, development or
15 commercial information concerning products or business methods
16 and unnecessary disclosure of that information should be
17 prevented. However, it is the intent of the Legislature to better
18 protect the health, safety, and financial security of Californians by
19 giving the parties to litigation the right to petition for disclosure to
20 appropriate federal and state regulatory bodies specific
21 information acquired through discovery which is not public, and
22 by making unenforceable any agreement which would restrict a
23 party from exercising that right.
24 SEC. 2. Section 2031 of the Code of Civil Procedure is
25 amended to read:



2031. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by inspecting documents, tangible things, and land or other property that are in the possession, custody, or control of any other party to the action.

(1) A party may demand that any other party produce and permit the party making the demand, or someone acting on that party's behalf, to inspect and to copy a document that is in the possession, custody, or control of the party on whom the demand is made.

(2) A party may demand that any other party produce and permit the party making the demand, or someone acting on that party's behalf, to inspect and to photograph, test, or sample any tangible things that are in the possession, custody, or control of the party on whom the demand is made.

(3) A party may demand that any other party allow the party making the demand, or someone acting on that party's behalf, to enter on any land or other property that is in the possession, custody, or control of the party on whom the demand is made, and to inspect and to measure, survey, photograph, test, or sample the land or other property, or any designated object or operation on it.

(b) A defendant may make a demand for inspection without leave of court at any time. A plaintiff may make a demand for inspection without leave of court at any time that is 10 days after the service of the summons on, or in unlawful detainer actions within five days after service of the summons on or appearance by, the party to whom the demand is directed, whichever occurs first. However, on motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to make an inspection demand at an earlier time.

(c) A party demanding an inspection shall number each set of demands consecutively. In the first paragraph immediately below the title of the case, there shall appear the identity of the demanding party, the set number, and the identity of the responding party. Each demand in a set shall be separately set forth, identified by number or letter, and shall do all of the following:

(1) Designate the documents, tangible things, or land or other property to be inspected either by specifically describing each individual item or by reasonably particularizing each category of item.

(2) Specify a reasonable time for the inspection that is at least 30 days after service of the demand, or in unlawful detainer actions at least five days after service of the demand, unless the court for good cause shown has granted leave to specify an earlier date.

(3) Specify a reasonable place for making the inspection, copying, and performing any related activity.

(4) Specify any related activity that is being demanded in addition to an inspection and copying, as well as the manner in which that related activity will be performed, and whether that activity will permanently alter or destroy the item involved.

(d) The party demanding an inspection shall serve a copy of the inspection demand on the party to whom it is directed and on all other parties who have appeared in the action.

(e) In addition to the inspection demands permitted by this section, a party may propound a supplemental demand to inspect any later acquired or discovered documents, tangible things, or land or other property that are in the possession, custody, or control of the party on whom the demand is made (1) twice prior to the initial setting of a trial date, and (2) subject to the time limits on discovery proceedings and motions provided in Section 2024, once after the initial setting of a trial date. However, on motion, for good cause shown, the court may grant leave to a party to propound an additional number of supplemental demands for inspection.

(f) (1) When an inspection of documents, tangible things or places has been demanded, the party to whom the demand has been directed, and any other party or affected person or organization, may promptly move for a protective order. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

(2) The court, for good cause shown, may make any order that justice requires to protect any party or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(A) That all or some of the items or categories of items in the inspection demand need not be produced or made available at all.

1 (B) That the time specified in subdivision (i) to respond to the
2 set of inspection demands, or to a particular item or category in the
3 set, be extended.

4 (C) That the place of production be other than that specified in
5 the inspection demand.

6 (D) That the inspection be made only on specified terms and
7 conditions.

8 (E) That a trade secret or other confidential research,
9 development, or commercial information not be disclosed, or be
10 disclosed only to specified persons or only in a specified way.

11 (F) That the items produced be sealed and thereafter opened
12 only on order of the court.

13 If the motion for a protective order is denied in whole or in part,
14 the court may order that the party to whom the demand was
15 directed provide or permit the discovery against which protection
16 was sought on terms and conditions that are just.

17 The court shall impose a monetary sanction under Section 2023
18 against any party, person, or attorney who unsuccessfully makes
19 or opposes a motion for a protective order, unless it finds that the
20 one subject to the sanction acted with substantial justification or
21 that other circumstances make the imposition of the sanction
22 unjust.

23 (3) (A) During the pendency of a court action, a party may file
24 a noticed motion for an order permitting any specific items or
25 information subject to a protective order to be sent to a California
26 state, or federal government, agency responsible for regulating or
27 monitoring the subject matter contained in the items or
28 information. ~~Such an~~ An order shall be issued only upon a showing
29 of good cause by the moving party. For purposes of this section,
30 good cause requires that the moving party: (i) identify with
31 reasonable particularity the items and information sought to be
32 disclosed to ~~such~~ the governmental agency and (ii) establish that
33 there is a substantial probability that the items or information
34 disclosed to ~~such an~~ the agency would meaningfully assist the
35 agency in investigating issues material to a defective product, *or*
36 environmental hazard, ~~financial fraud, or unfair insurance claim~~
37 ~~practice~~. Items or information sent to a governmental agency are
38 not subject to the California Public Records Act (Chapter 3.5
39 (commencing with Section 6250) of Division 7 of Title 1 of the
40 Government Code), or subject to subpoena. The items or

1 information shall be used only in furtherance of a legal or
2 regulatory action—~~which~~ *that* the governmental agency deems
3 appropriate. The items or information shall retain their
4 confidential status under state law when transmitted and *shall* be
5 treated as a confidential communication or report made to the
6 applicable governmental agency. The items or information
7 transmitted ~~shall not be subject to disclose~~ *may not be subject to*
8 *disclosure*, except as required by the disclosure rules applied by the
9 governmental agency when dealing with trade secrets or other
10 confidential communications or reports.

11 (B) A party requesting ~~such~~ an order shall lodge the items or
12 information subject to a protective order with the court when the
13 motion is made, and the lodged items or information will be
14 conditionally under seal. The party requesting ~~such an~~ *the* order
15 shall put the items or information in a manila envelope or other
16 appropriate container, seal the envelope or container, label the
17 envelope or container “LODGED - CONDITIONALLY UNDER
18 SEAL,” affix to the envelope or container a cover sheet that: (i)
19 contains all the information required on a caption page under ~~rule~~
20 *Rule 201*; and (ii) states that the enclosed items or information are
21 lodged pursuant to this rule. Upon receipt of items or information
22 lodged under this rule, the clerk shall endorse the affixed cover
23 sheet with the date of its receipt and shall retain but not file the
24 items or information unless the court orders them filed. Upon
25 determination of the motion, the clerk shall return the lodged items
26 or information to the submitting party and may not place it in the
27 case file.

28 (C) Within 20 days of the date of issuance of an order directing
29 that items or information be sent to a governmental agency under
30 this section, the party opposing disclosure may file an original
31 proceeding in a court of appeal seeking review of the disclosure
32 order. The disclosure order shall be stayed, and the terms of the
33 protective order shall remain in effect, until the 20th day has
34 passed without an original proceeding being filed, or, if an original
35 proceeding is filed, until the court of appeal rules.

36 (D) Any portion of an agreement or contract that restricts a
37 party from exercising its right to file a motion pursuant to this
38 paragraph is void, contrary to public policy and may not be
39 enforced.



1 (E) An order entered pursuant to this section ~~shall not be~~ *is not*
2 admissible in any action or in any proceeding to establish the
3 liability of any party.

4 (g) The party to whom an inspection demand has been directed
5 shall respond separately to each item or category of item by a
6 statement that the party will comply with the particular demand for
7 inspection and any related activities, a representation that the party
8 lacks the ability to comply with the demand for inspection of a
9 particular item or category of item, or an objection to the particular
10 demand.

11 In the first paragraph of the response immediately below the title
12 of the case, there shall appear the identity of the responding party,
13 the set number, and the identity of the demanding party. Each
14 statement of compliance, each representation, and each objection
15 in the response shall bear the same number and be in the same
16 sequence as the corresponding item or category in the demand, but
17 the text of that item or category need not be repeated.

18 (1) A statement that the party to whom an inspection demand
19 has been directed will comply with the particular demand shall
20 state that the production, inspection, and related activity
21 demanded will be allowed either in whole or in part, and that all
22 documents or things in the demanded category that are in the
23 possession, custody, or control of that party and to which no
24 objection is being made will be included in the production.

25 Any documents demanded shall either be produced as they are
26 kept in the usual course of business, or be organized and labeled
27 to correspond with the categories in the demand. If necessary, the
28 responding party at the reasonable expense of the demanding party
29 shall, through detection devices, translate any data compilations
30 included in the demand into reasonably usable form.

31 (2) A representation of inability to comply with the particular
32 demand for inspection shall affirm that a diligent search and a
33 reasonable inquiry has been made in an effort to comply with that
34 demand. This statement shall also specify whether the inability to
35 comply is because the particular item or category has never
36 existed, has been destroyed, has been lost, misplaced, or stolen, or
37 has never been, or is no longer, in the possession, custody, or
38 control of the responding party. The statement shall set forth the
39 name and address of any natural person or organization known or

1 believed by that party to have possession, custody, or control of
2 that item or category of item.

3 (3) If only part of an item or category of item in an inspection
4 demand is objectionable, the response shall contain a statement of
5 compliance, or a representation of inability to comply with respect
6 to the remainder of that item or category. If the responding party
7 objects to the demand for inspection of an item or category of item,
8 the response shall (A) identify with particularity any document,
9 tangible thing, or land falling within any category of item in the
10 demand to which an objection is being made, and (B) set forth
11 clearly the extent of, and the specific ground for, the objection. If
12 an objection is based on a claim of privilege, the particular
13 privilege invoked shall be stated. If an objection is based on a claim
14 that the information sought is protected work product under
15 Section 2018, that claim shall be expressly asserted.

16 (h) The party to whom the demand for inspection is directed
17 shall sign the response under oath unless the response contains
18 only objections. If that party is a public or private corporation or
19 a partnership or association or governmental agency, one of its
20 officers or agents shall sign the response under oath on behalf of
21 that party. If the officer or agent signing the response on behalf of
22 that party is an attorney acting in that capacity for a party, that party
23 waives any lawyer-client privilege and any protection for work
24 product under Section 2018 during any subsequent discovery from
25 that attorney concerning the identity of the sources of the
26 information contained in the response. The attorney for the
27 responding party shall sign any responses that contain an
28 objection.

29 (i) Within 30 days after service of an inspection demand, or in
30 unlawful detainer actions within five days of an inspection
31 demand, the party to whom the demand is directed shall serve the
32 original of the response to it on the party making the demand, and
33 a copy of the response on all other parties who have appeared in
34 the action, unless on motion of the party making the demand the
35 court has shortened the time for response, or unless on motion of
36 the party to whom the demand has been directed, the court has
37 extended the time for response. In unlawful detainer actions, the
38 party to whom the demand is directed shall have at least five days
39 from the date of service of the demand to respond unless on motion

1 of the party making the demand the court has shortened the time
2 for the response.

3 (j) The party demanding an inspection and the responding party
4 may agree to extend the time for service of a response to a set of
5 inspection demands, or to particular items or categories of items
6 in a set, to a date beyond that provided in subdivision (i). This
7 agreement may be informal, but it shall be confirmed in a writing
8 that specifies the extended date for service of a response. Unless
9 this agreement expressly states otherwise, it is effective to preserve
10 to the responding party the right to respond to any item or category
11 of item in the demand to which the agreement applies in any
12 manner specified in subdivision (g).

13 (k) The inspection demand and the response to it shall not be
14 filed with the court. The party demanding an inspection shall retain
15 both the original of the inspection demand, with the original proof
16 of service affixed to it, and the original of the sworn response until
17 six months after final disposition of the action. At that time, both
18 originals may be destroyed, unless the court, on motion of any
19 party and for good cause shown, orders that the originals be
20 preserved for a longer period.

21 (l) If a party to whom an inspection demand has been directed
22 fails to serve a timely response to it, that party waives any
23 objection to the demand, including one based on privilege or on the
24 protection for work product under Section 2018. However, the
25 court, on motion, may relieve that party from this waiver on its
26 determination that (1) the party has subsequently served a response
27 that is in substantial compliance with subdivision (g), and (2) the
28 party's failure to serve a timely response was the result of mistake,
29 inadvertence, or excusable neglect.

30 The party making the demand may move for an order
31 compelling response to the inspection demand. The court shall
32 impose a monetary sanction under Section 2023 against any party,
33 person, or attorney who unsuccessfully makes or opposes a motion
34 to compel a response to an inspection demand, unless it finds that
35 the one subject to the sanction acted with substantial justification
36 or that other circumstances make the imposition of the sanction
37 unjust. If a party then fails to obey the order compelling a response,
38 the court may make those orders that are just, including the
39 imposition of an issue sanction, an evidence sanction, or a
40 terminating sanction under Section 2023. In lieu of or in addition

1 to that sanction, the court may impose a monetary sanction under
2 Section 2023.

3 (m) If the party demanding an inspection, on receipt of a
4 response to an inspection demand, deems that (1) a statement of
5 compliance with the demand is incomplete, (2) a representation of
6 inability to comply is inadequate, incomplete, or evasive, or (3) an
7 objection in the response is without merit or too general, that party
8 may move for an order compelling further response to the demand.
9 This motion (A) shall set forth specific facts showing good cause
10 justifying the discovery sought by the inspection demand, and (B)
11 shall be accompanied by a declaration stating facts showing a
12 reasonable and good faith attempt at an informal resolution of any
13 issue presented by it.

14 Unless notice of this motion is given within 45 days of the
15 service of the response, or any supplemental response, or on or
16 before any specific later date to which the demanding party and the
17 responding party have agreed in writing, the demanding party
18 waives any right to compel a further response to the inspection
19 demand.

20 The court shall impose a monetary sanction under Section 2023
21 against any party, person, or attorney who unsuccessfully makes
22 or opposes a motion to compel further response to an inspection
23 demand, unless it finds that the one subject to the sanction acted
24 with substantial justification or that other circumstances make the
25 imposition of the sanction unjust.

26 If a party fails to obey an order compelling further response, the
27 court may make those orders that are just, including the imposition
28 of an issue sanction, an evidence sanction, or a terminating
29 sanction under Section 2023. In lieu of or in addition to that
30 sanction, the court may impose a monetary sanction under Section
31 2023.

32 (n) If a party filing a response to a demand for inspection under
33 subdivision (g) thereafter fails to permit the inspection in
34 accordance with that party's statement of compliance, the party
35 demanding the inspection may move for an order compelling
36 compliance.

37 The court shall impose a monetary sanction under Section 2023
38 against any party, person, or attorney who unsuccessfully makes
39 or opposes a motion to compel compliance with an inspection
40 demand, unless it finds that the one subject to the sanction acted

with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a party then fails to obey an order compelling inspection, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to that sanction, the court may impose a monetary sanction under Section 2023.

(o) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute deletes or extends that date.

SEC. 3. Section 2031 is added to the Code of Civil Procedure, to read:

2031. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by inspecting documents, tangible things, and land or other property that are in the possession, custody, or control of any other party to the action.

(1) A party may demand that any other party produce and permit the party making the demand, or someone acting on that party's behalf, to inspect and to copy a document that is in the possession, custody, or control of the party on whom the demand is made.

(2) A party may demand that any other party produce and permit the party making the demand, or someone acting on that party's behalf, to inspect and to photograph, test, or sample any tangible things that are in the possession, custody, or control of the party on whom the demand is made.

(3) A party may demand that any other party allow the party making the demand, or someone acting on that party's behalf, to enter on any land or other property that is in the possession, custody, or control of the party on whom the demand is made, and to inspect and to measure, survey, photograph, test, or sample the land or other property, or any designated object or operation on it.

(b) A defendant may make a demand for inspection without leave of court at any time. A plaintiff may make a demand for inspection without leave of court at any time that is 10 days after the service of the summons on, or in unlawful detainer actions within five days after service of the summons on or appearance by, the party to whom the demand is directed, whichever occurs first.

1 However, on motion with or without notice, the court, for good
2 cause shown, may grant leave to a plaintiff to make an inspection
3 demand at an earlier time.

4 (c) A party demanding an inspection shall number each set of
5 demands consecutively. In the first paragraph immediately below
6 the title of the case, there shall appear the identity of the demanding
7 party, the set number, and the identity of the responding party.
8 Each demand in a set shall be separately set forth, identified by
9 number or letter, and shall do all of the following:

10 (1) Designate the documents, tangible things, or land or other
11 property to be inspected either by specifically describing each
12 individual item or by reasonably particularizing each category of
13 item.

14 (2) Specify a reasonable time for the inspection that is at least
15 30 days after service of the demand, or in unlawful detainer actions
16 at least five days after service of the demand, unless the court for
17 good cause shown has granted leave to specify an earlier date.

18 (3) Specify a reasonable place for making the inspection,
19 copying, and performing any related activity.

20 (4) Specify any related activity that is being demanded in
21 addition to an inspection and copying, as well as the manner in
22 which that related activity will be performed, and whether that
23 activity will permanently alter or destroy the item involved.

24 (d) The party demanding an inspection shall serve a copy of the
25 inspection demand on the party to whom it is directed and on all
26 other parties who have appeared in the action.

27 (e) In addition to the inspection demands permitted by this
28 section, a party may propound a supplemental demand to inspect
29 any later acquired or discovered documents, tangible things, or
30 land or other property that are in the possession, custody, or control
31 of the party on whom the demand is made (1) twice prior to the
32 initial setting of a trial date, and (2) subject to the time limits on
33 discovery proceedings and motions provided in Section 2024,
34 once after the initial setting of a trial date. However, on motion, for
35 good cause shown, the court may grant leave to a party to propound
36 an additional number of supplemental demands for inspection.

37 (f) When an inspection of documents, tangible things, or places
38 has been demanded, the party to whom the demand has been
39 directed, and any other party or affected person or organization,
40 may promptly move for a protective order. This motion shall be

1 accompanied by a declaration stating facts showing a reasonable
2 and good faith attempt at an informal resolution of each issue
3 presented by the motion.

4 The court, for good cause shown, may make any order that
5 justice requires to protect any party or other natural person or
6 organization from unwarranted annoyance, embarrassment, or
7 oppression, or undue burden and expense. This protective order
8 may include, but is not limited to, one or more of the following
9 directions:

10 (1) That all or some of the items or categories of items in the
11 inspection demand need not be produced or made available at all.

12 (2) That the time specified in subdivision (i) to respond to the
13 set of inspection demands, or to a particular item or category in the
14 set, be extended.

15 (3) That the place of production be other than that specified in
16 the inspection demand.

17 (4) That the inspection be made only on specified terms and
18 conditions.

19 (5) That a trade secret or other confidential research,
20 development, or commercial information not be disclosed, or be
21 disclosed only to specified persons or only in a specified way.

22 (6) That the items produced be sealed and thereafter opened
23 only on order of the court.

24 If the motion for a protective order is denied in whole or in part,
25 the court may order that the party to whom the demand was
26 directed provide or permit the discovery against which protection
27 was sought on terms and conditions that are just.

28 The court shall impose a monetary sanction under Section 2023
29 against any party, person, or attorney who unsuccessfully makes
30 or opposes a motion for a protective order, unless it finds that the
31 one subject to the sanction acted with substantial justification or
32 that other circumstances make the imposition of the sanction
33 unjust.

34 (g) The party to whom an inspection demand has been directed
35 shall respond separately to each item or category of item by a
36 statement that the party will comply with the particular demand for
37 inspection and any related activities, a representation that the party
38 lacks the ability to comply with the demand for inspection of a
39 particular item or category of item, or an objection to the particular
40 demand.

1 In the first paragraph of the response immediately below the title
2 of the case, there shall appear the identity of the responding party,
3 the set number, and the identity of the demanding party. Each
4 statement of compliance, each representation, and each objection
5 in the response shall bear the same number and be in the same
6 sequence as the corresponding item or category in the demand, but
7 the text of that item or category need not be repeated.

8 (1) A statement that the party to whom an inspection demand
9 has been directed will comply with the particular demand shall
10 state that the production, inspection, and related activity
11 demanded will be allowed either in whole or in part, and that all
12 documents or things in the demanded category that are in the
13 possession, custody, or control of that party and to which no
14 objection is being made will be included in the production.

15 Any documents demanded shall either be produced as they are
16 kept in the usual course of business, or be organized and labeled
17 to correspond with the categories in the demand. If necessary, the
18 responding party at the reasonable expense of the demanding party
19 shall, through detection devices, translate any data compilations
20 included in the demand into reasonably usable form.

21 (2) A representation of inability to comply with the particular
22 demand for inspection shall affirm that a diligent search and a
23 reasonable inquiry has been made in an effort to comply with that
24 demand. This statement shall also specify whether the inability to
25 comply is because the particular item or category has never
26 existed, has been destroyed, has been lost, misplaced, or stolen, or
27 has never been, or is no longer, in the possession, custody, or
28 control of the responding party. The statement shall set forth the
29 name and address of any natural person or organization known or
30 believed by that party to have possession, custody, or control of
31 that item or category of item.

32 (3) If only part of an item or category of item in an inspection
33 demand is objectionable, the response shall contain a statement of
34 compliance, or a representation of inability to comply with respect
35 to the remainder of that item or category. If the responding party
36 objects to the demand for inspection of an item or category of item,
37 the response shall (A) identify with particularity any document,
38 tangible thing, or land falling within any category of item in the
39 demand to which an objection is being made, and (B) set forth
40 clearly the extent of, and the specific ground for, the objection. If



1 an objection is based on a claim of privilege, the particular
2 privilege invoked shall be stated. If an objection is based on a claim
3 that the information sought is protected work product under
4 Section 2018, that claim shall be expressly asserted.

5 (h) The party to whom the demand for inspection is directed
6 shall sign the response under oath unless the response contains
7 only objections. If that party is a public or private corporation or
8 a partnership or association or governmental agency, one of its
9 officers or agents shall sign the response under oath on behalf of
10 that party. If the officer or agent signing the response on behalf of
11 that party is an attorney acting in that capacity for a party, that party
12 waives any lawyer-client privilege and any protection for work
13 product under Section 2018 during any subsequent discovery from
14 that attorney concerning the identity of the sources of the
15 information contained in the response. The attorney for the
16 responding party shall sign any responses that contain an
17 objection.

18 (i) Within 30 days after service of an inspection demand, or in
19 unlawful detainer actions within five days of an inspection
20 demand, the party to whom the demand is directed shall serve the
21 original of the response to it on the party making the demand, and
22 a copy of the response on all other parties who have appeared in
23 the action, unless on motion of the party making the demand the
24 court has shortened the time for response, or unless on motion of
25 the party to whom the demand has been directed, the court has
26 extended the time for response. In unlawful detainer actions, the
27 party to whom the demand is directed shall have at least five days
28 from the date of service of the demand to respond unless on motion
29 of the party making the demand the court has shortened the time
30 for the response.

31 (j) The party demanding an inspection and the responding party
32 may agree to extend the time for service of a response to a set of
33 inspection demands, or to particular items or categories of items
34 in a set, to a date beyond that provided in subdivision (i). This
35 agreement may be informal, but it shall be confirmed in a writing
36 that specifies the extended date for service of a response. Unless
37 this agreement expressly states otherwise, it is effective to preserve
38 to the responding party the right to respond to any item or category
39 of item in the demand to which the agreement applies in any
40 manner specified in subdivision (g).

(k) The inspection demand and the response to it shall not be filed with the court. The party demanding an inspection shall retain both the original of the inspection demand, with the original proof of service affixed to it, and the original of the sworn response until six months after final disposition of the action. At that time, both originals may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the originals be preserved for a longer period.

(l) If a party to whom an inspection demand has been directed fails to serve a timely response to it, that party waives any objection to the demand, including one based on privilege or on the protection for work product under Section 2018. However, the court, on motion, may relieve that party from this waiver on its determination that (1) the party has subsequently served a response that is in substantial compliance with subdivision (g), and (2) the party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

The party making the demand may move for an order compelling response to the inspection demand. The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to an inspection demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. If a party then fails to obey the order compelling a response, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to that sanction, the court may impose a monetary sanction under Section 2023.

(m) If the party demanding an inspection, on receipt of a response to an inspection demand, deems that (1) a statement of compliance with the demand is incomplete, (2) a representation of inability to comply is inadequate, incomplete, or evasive, or (3) an objection in the response is without merit or too general, that party may move for an order compelling further response to the demand. This motion (A) shall set forth specific facts showing good cause justifying the discovery sought by the inspection demand, and (B) shall be accompanied by a declaration stating facts showing a

1 reasonable and good faith attempt at an informal resolution of any
2 issue presented by it.

3 Unless notice of this motion is given within 45 days of the
4 service of the response, or any supplemental response, or on or
5 before any specific later date to which the demanding party and the
6 responding party have agreed in writing, the demanding party
7 waives any right to compel a further response to the inspection
8 demand.

9 The court shall impose a monetary sanction under Section 2023
10 against any party, person, or attorney who unsuccessfully makes
11 or opposes a motion to compel further response to an inspection
12 demand, unless it finds that the one subject to the sanction acted
13 with substantial justification or that other circumstances make the
14 imposition of the sanction unjust.

15 If a party fails to obey an order compelling further response, the
16 court may make those orders that are just, including the imposition
17 of an issue sanction, an evidence sanction, or a terminating
18 sanction under Section 2023. In lieu of or in addition to that
19 sanction, the court may impose a monetary sanction under Section
20 2023.

21 (n) If a party filing a response to a demand for inspection under
22 subdivision (g) thereafter fails to permit the inspection in
23 accordance with that party's statement of compliance, the party
24 demanding the inspection may move for an order compelling
25 compliance.

26 The court shall impose a monetary sanction under Section 2023
27 against any party, person, or attorney who unsuccessfully makes
28 or opposes a motion to compel compliance with an inspection
29 demand, unless it finds that the one subject to the sanction acted
30 with substantial justification or that other circumstances make the
31 imposition of the sanction unjust.

32 If a party then fails to obey an order compelling inspection, the
33 court may make those orders that are just, including the imposition
34 of an issue sanction, an evidence sanction, or a terminating
35 sanction under Section 2023. In lieu of or in addition to that
36 sanction, the court may impose a monetary sanction under Section
37 2023.

38 (o) This section shall become operative January 1, 2007.

39 SEC. 4. Section 6254 of the Government Code is amended to
40 read:

1 6254. Except as provided in Sections 6254.7 and 6254.13,
2 nothing in this chapter shall be construed to require disclosure of
3 records that are any of the following:

4 (a) Preliminary drafts, notes, or interagency or intra-agency
5 memoranda that are not retained by the public agency in the
6 ordinary course of business, provided that the public interest in
7 withholding those records clearly outweighs the public interest in
8 disclosure.

9 (b) Records pertaining to pending litigation to which the public
10 agency is a party, or to claims made pursuant to Division 3.6
11 (commencing with Section 810), until the pending litigation or
12 claim has been finally adjudicated or otherwise settled.

13 (c) Personnel, medical, or similar files, the disclosure of which
14 would constitute an unwarranted invasion of personal privacy.

15 (d) Contained in or related to:

16 (1) Applications filed with any state agency responsible for the
17 regulation or supervision of the issuance of securities or of
18 financial institutions, including, but not limited to, banks, savings
19 and loan associations, industrial loan companies, credit unions,
20 and insurance companies.

21 (2) Examination, operating, or condition reports prepared by,
22 on behalf of, or for the use of, any state agency referred to in
23 paragraph (1).

24 (3) Preliminary drafts, notes, or interagency or intra-agency
25 communications prepared by, on behalf of, or for the use of, any
26 state agency referred to in paragraph (1).

27 (4) Information received in confidence by any state agency
28 referred to in paragraph (1).

29 (e) Geological and geophysical data, plant production data, and
30 similar information relating to utility systems development, or
31 market or crop reports, which are obtained in confidence from any
32 person.

33 (f) Records of complaints to, or investigations conducted by, or
34 records of intelligence information or security procedures of, the
35 office of the Attorney General and the Department of Justice, and
36 any state or local police agency, or any investigatory or security
37 files compiled by any other state or local police agency, or any
38 investigatory or security files compiled by any other state or local
39 agency for correctional, law enforcement, or licensing purposes,
40 except that state and local law enforcement agencies shall disclose

1 the names and addresses of persons involved in, or witnesses other
2 than confidential informants to, the incident, the description of any
3 property involved, the date, time, and location of the incident, all
4 diagrams, statements of the parties involved in the incident, the
5 statements of all witnesses, other than confidential informants, to
6 the victims of an incident, or an authorized representative thereof,
7 an insurance carrier against which a claim has been or might be
8 made, and any person suffering bodily injury or property damage
9 or loss, as the result of the incident caused by arson, burglary, fire,
10 explosion, larceny, robbery, carjacking, vandalism, vehicle theft,
11 or a crime as defined by subdivision (c) of Section 13960, unless
12 the disclosure would endanger the safety of a witness or other
13 person involved in the investigation, or unless disclosure would
14 endanger the successful completion of the investigation or a
15 related investigation. However, nothing in this division shall
16 require the disclosure of that portion of those investigative files
17 that reflect the analysis or conclusions of the investigating officer.

18 Other provisions of this subdivision notwithstanding, state and
19 local law enforcement agencies shall make public the following
20 information, except to the extent that disclosure of a particular
21 item of information would endanger the safety of a person
22 involved in an investigation or would endanger the successful
23 completion of the investigation or a related investigation:

24 (1) The full name and occupation of every individual arrested
25 by the agency, the individual's physical description including date
26 of birth, color of eyes and hair, sex, height and weight, the time and
27 date of arrest, the time and date of booking, the location of the
28 arrest, the factual circumstances surrounding the arrest, the
29 amount of bail set, the time and manner of release or the location
30 where the individual is currently being held, and all charges the
31 individual is being held upon, including any outstanding warrants
32 from other jurisdictions and parole or probation holds.

33 (2) Subject to the restrictions imposed by Section 841.5 of the
34 Penal Code, the time, substance, and location of all complaints or
35 requests for assistance received by the agency and the time and
36 nature of the response thereto, including, to the extent the
37 information regarding crimes alleged or committed or any other
38 incident investigated is recorded, the time, date, and location of
39 occurrence, the time and date of the report, the name and age of the
40 victim, the factual circumstances surrounding the crime or

1 incident, and a general description of any injuries, property, or
2 weapons involved. The name of a victim of any crime defined by
3 Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286,
4 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code
5 may be withheld at the victim's request, or at the request of the
6 victim's parent or guardian if the victim is a minor. When a person
7 is the victim of more than one crime, information disclosing that
8 the person is a victim of a crime defined by Section 220, 261,
9 261.5, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6,
10 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the
11 request of the victim, or the victim's parent or guardian if the
12 victim is a minor, in making the report of the crime, or of any crime
13 or incident accompanying the crime, available to the public in
14 compliance with the requirements of this paragraph.

15 (3) Subject to the restrictions of Section 841.5 of the Penal
16 Code and this subdivision, the current address of every individual
17 arrested by the agency and the current address of the victim of a
18 crime, where the requester declares under penalty of perjury that
19 the request is made for a scholarly, journalistic, political, or
20 governmental purpose, or that the request is made for investigation
21 purposes by a licensed private investigator as described in Chapter
22 11.3 (commencing with Section 7512) of Division 3 of the
23 Business and Professions Code, except that the address of the
24 victim of any crime defined by Section 220, 261, 261.5, 262, 264,
25 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7,
26 422.75, or 646.9 of the Penal Code shall remain confidential.
27 Address information obtained pursuant to this paragraph shall not
28 be used directly or indirectly to sell a product or service to any
29 individual or group of individuals, and the requester shall execute
30 a declaration to that effect under penalty of perjury.

31 (g) Test questions, scoring keys, and other examination data
32 used to administer a licensing examination, examination for
33 employment, or academic examination, except as provided for in
34 Chapter 3 (commencing with Section 99150) of Part 65 of the
35 Education Code.

36 (h) The contents of real estate appraisals or engineering or
37 feasibility estimates and evaluations made for or by the state or
38 local agency relative to the acquisition of property, or to
39 prospective public supply and construction contracts, until all of
40 the property has been acquired or all of the contract agreement

1 obtained. However, the law of eminent domain shall not be
2 affected by this provision.

3 (i) Information required from any taxpayer in connection with
4 the collection of local taxes that is received in confidence and the
5 disclosure of the information to other persons would result in
6 unfair competitive disadvantage to the person supplying the
7 information.

8 (j) Library circulation records kept for the purpose of
9 identifying the borrower of items available in libraries, and library
10 and museum materials made or acquired and presented solely for
11 reference or exhibition purposes. The exemption in this
12 subdivision shall not apply to records of fines imposed on the
13 borrowers.

14 (k) Records the disclosure of which is exempted or prohibited
15 pursuant to federal or state law, including, but not limited to,
16 provisions of the Evidence Code relating to privilege.

17 (l) Correspondence of and to the Governor or employees of the
18 Governor's office or in the custody of or maintained by the
19 Governor's legal affairs secretary, provided that public records
20 shall not be transferred to the custody of the Governor's legal
21 affairs secretary to evade the disclosure provisions of this chapter.

22 (m) In the custody of or maintained by the Legislative Counsel,
23 except those records in the public data base maintained by the
24 Legislative Counsel that are described in Section 10248.

25 (n) Statements of personal worth or personal financial data
26 required by a licensing agency and filed by an applicant with the
27 licensing agency to establish his or her personal qualification for
28 the license, certificate, or permit applied for.

29 (o) Financial data contained in applications for financing under
30 Division 27 (commencing with Section 44500) of the Health and
31 Safety Code, where an authorized officer of the California
32 Pollution Control Financing Authority determines that disclosure
33 of the financial data would be competitively injurious to the
34 applicant and the data is required in order to obtain guarantees
35 from the United States Small Business Administration. The
36 California Pollution Control Financing Authority shall adopt rules
37 for review of individual requests for confidentiality under this
38 section and for making available to the public those portions of an
39 application which are subject to disclosure under this chapter.



1 (p) Records of state agencies related to activities governed by
2 Chapter 10.3 (commencing with Section 3512), Chapter 10.5
3 (commencing with Section 3525), and Chapter 12 (commencing
4 with Section 3560) of Division 4 of Title 1, that reveal a state
5 agency's deliberative processes, impressions, evaluations,
6 opinions, recommendations, meeting minutes, research, work
7 products, theories, or strategy, or that provide instruction, advice,
8 or training to employees who do not have full collective bargaining
9 and representation rights under these chapters. Nothing in this
10 subdivision shall be construed to limit the disclosure duties of a
11 state agency with respect to any other records relating to the
12 activities governed by the employee relations acts referred to in
13 this subdivision.

14 (q) Records of state agencies related to activities governed by
15 Articles 2.6 (commencing with Section 14081), 2.8 (commencing
16 with Section 14087.5), and 2.91 (commencing with Section
17 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and
18 Institutions Code, that reveal the special negotiator's deliberative
19 processes, discussions, communications, or any other portion of
20 the negotiations with providers of health care services,
21 impressions, opinions, recommendations, meeting minutes,
22 research, work product, theories, or strategy, or that provide
23 instruction, advice, or training to employees.

24 Except for the portion of a contract containing the rates of
25 payment, contracts for inpatient services entered into pursuant to
26 these articles, on or after April 1, 1984, shall be open to inspection
27 one year after they are fully executed. In the event that a contract
28 for inpatient services that is entered into prior to April 1, 1984, is
29 amended on or after April 1, 1984, the amendment, except for any
30 portion containing the rates of payment, shall be open to inspection
31 one year after it is fully executed. If the California Medical
32 Assistance Commission enters into contracts with health care
33 providers for other than inpatient hospital services, those contracts
34 shall be open to inspection one year after they are fully executed.

35 Three years after a contract or amendment is open to inspection
36 under this subdivision, the portion of the contract or amendment
37 containing the rates of payment shall be open to inspection.

38 Notwithstanding any other provision of law, the entire contract
39 or amendment shall be open to inspection by the Joint Legislative
40 Audit Committee. The Joint Legislative Audit Committee shall

1 maintain the confidentiality of the contracts and amendments until
2 the time a contract or amendment is fully open to inspection by the
3 public.

4 (r) Records of Native American graves, cemeteries, and sacred
5 places maintained by the Native American Heritage Commission.

6 (s) A final accreditation report of the Joint Commission on
7 Accreditation of Hospitals that has been transmitted to the State
8 Department of Health Services pursuant to subdivision (b) of
9 Section 1282 of the Health and Safety Code.

10 (t) Records of a local hospital district, formed pursuant to
11 Division 23 (commencing with Section 32000) of the Health and
12 Safety Code, or the records of a municipal hospital, formed
13 pursuant to Article 7 (commencing with Section 37600) or Article
14 8 (commencing with Section 37650) of Chapter 5 of Division 3 of
15 Title 4 of this code, that relate to any contract with an insurer or
16 nonprofit hospital service plan for inpatient or outpatient services
17 for alternative rates pursuant to Section 10133 or 11512 of the
18 Insurance Code. However, the record shall be open to inspection
19 within one year after the contract is fully executed.

20 (u) (1) Information contained in applications for licenses to
21 carry firearms issued pursuant to Section 12050 of the Penal Code
22 by the sheriff of a county or the chief or other head of a municipal
23 police department that indicates when or where the applicant is
24 vulnerable to attack or that concerns the applicant's medical or
25 psychological history or that of members of his or her family.

26 (2) The home address and telephone number of peace officers,
27 judges, court commissioners, and magistrates that are set forth in
28 applications for licenses to carry firearms issued pursuant to
29 Section 12050 of the Penal Code by the sheriff of a county or the
30 chief or other head of a municipal police department.

31 (3) The home address and telephone number of peace officers,
32 judges, court commissioners, and magistrates that are set forth in
33 licenses to carry firearms issued pursuant to Section 12050 of the
34 Penal Code by the sheriff of a county or the chief or other head of
35 a municipal police department.

36 (v) (1) Records of the Major Risk Medical Insurance Program
37 related to activities governed by Part 6.3 (commencing with
38 Section 12695), and Part 6.5 (commencing with Section 12700),
39 of Division 2 of the Insurance Code, and that reveal the
40 deliberative processes, discussions, communications, or any other

1 portion of the negotiations with health plans, or the impressions,
2 opinions, recommendations, meeting minutes, research, work
3 product, theories, or strategy of the board or its staff, or records
4 that provide instructions, advice, or training to employees.

5 (2) (A) Except for the portion of a contract that contains the
6 rates of payment, contracts for health coverage entered into
7 pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5
8 (commencing with Section 12700), of Division 2 of the Insurance
9 Code, on or after July 1, 1991, shall be open to inspection one year
10 after they have been fully executed.

11 (B) In the event that a contract for health coverage that is
12 entered into prior to July 1, 1991, is amended on or after July 1,
13 1991, the amendment, except for any portion containing the rates
14 of payment shall be open to inspection one year after the
15 amendment has been fully executed.

16 (3) Three years after a contract or amendment is open to
17 inspection pursuant to this subdivision, the portion of the contract
18 or amendment containing the rates of payment shall be open to
19 inspection.

20 (4) Notwithstanding any other provision of law, the entire
21 contract or amendments to a contract shall be open to inspection
22 by the Joint Legislative Audit Committee. The Joint Legislative
23 Audit Committee shall maintain the confidentiality of the
24 contracts and amendments thereto, until the contract or
25 amendments to a contract is open to inspection pursuant to
26 paragraph (3).

27 (w) (1) Records of the Major Risk Medical Insurance Program
28 related to activities governed by Chapter 14 (commencing with
29 Section 10700) of Part 2 of Division 2 of the Insurance Code, and
30 that reveal the deliberative processes, discussions,
31 communications, or any other portion of the negotiations with
32 health plans, or the impressions, opinions, recommendations,
33 meeting minutes, research, work product, theories, or strategy of
34 the board or its staff, or records that provide instructions, advice,
35 or training to employees.

36 (2) Except for the portion of a contract that contains the rates
37 of payment, contracts for health coverage entered into pursuant to
38 Chapter 14 (commencing with Section 10700) of Part 2 of
39 Division 2 of the Insurance Code, on or after January 1, 1993, shall
40 be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or, financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code, on or after January 1, 1998, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract entered into pursuant to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative

1 Audit Committee shall maintain the confidentiality of the
2 contracts and amendments thereto until the contract or
3 amendments to a contract are open to inspection pursuant to
4 paragraph (2) or (3).

5 (z) Records obtained pursuant to paragraph (2) of subdivision
6 (c) of Section 2891.1 of the Public Utilities Code.

7 (aa) Documents provided to a governmental agency pursuant
8 to subdivision (f) of Section 2031 of the Code of Civil Procedure.

9 Nothing in this section prevents any agency from opening its
10 records concerning the administration of the agency to public
11 inspection, unless disclosure is otherwise prohibited by law,
12 including, but not limited to, provisions of the Evidence Code
13 relating to privilege and investing a party other than the agency
14 with a privilege to protect information contained in the record
15 from disclosure. The agency may open records affected by the
16 privilege to public disclosure with the consent of the holder of the
17 privilege.

18 Nothing in this section prevents any health facility from
19 disclosing to a certified bargaining agent relevant financing
20 information pursuant to Section 8 of the National Labor Relations
21 Act.

